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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,061	02/06/2004	Marc Lewis	077615-0013	4826
31824 7590 05/28/2008 MCDERMOTT WILL & EMERY LLP 18191 VON KARMAN AVE. SUITE 500 IRVINE, CA 92612-7108			EXAMINER ANDREIL RADU	
			ART UNIT 4137	PAPER NUMBER
			MAIL DATE 05/28/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/774,061

Applicant(s)

LEWIS ET AL.

Examiner

RADU ANDREI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 04/28/2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 23-31 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☐ Claim(s) 23-31 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 08/09/2004; 08/13/2004
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Inventor's Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. This Office action is in response to Applicant's response from 04/28/2008. The benefits of the foreign filing date have been considered. Claims 23-31 are pending and are considered below.

Examiner Notes

Claims 23 and 29, which are directed to an apparatus, recite "wherein" clauses. These clauses do not distinguish the claims from the prior art. (See MPEP 2114; While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone (*In re Swineheart*, 169 USPQ 226; *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997)))

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 23-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Restis (US Patent Publication No. 2004/0024638) ("Restis").

4. Regarding claim 23, Restis discloses: A point of sale terminal comprising:

- a) a scanner means for reading product ids from products; ([0044]; [0059]; fig 4; [0070]-[0073])
- b) a machine-to-machine data input device for receiving a user id from a communication user agent; (fig 1, elm A104; fig 2B; fig 11; [0044]; [0069]; [0088]; clm 7)
- c) network communication means; and [0019]; [0023]; [0075]
- d) processing means operable to accumulate a total purchase price in dependence on product id codes read by the scanner means and store said code values, ([0085]; [0088]; fig 3, elm 501; [0090]; fig 4, elm 509; [0092])

wherein the processing means is configured to be responsive to a user id from said data input device to:

- i) transmit said user id to a remote location in a request message via the network communication means; [0071]; [0087]; [0090]; [0103]
- ii) receive a response to said request message via the network communication means, the response containing a list of product id codes; and (abstract; [0076])
- iii) reduce the accumulated purchase price in dependence on matches between elements in said list and said stored product codes. (abstract; [0033]; [0034]; [0084])

5. Regarding claim 24, Restis discloses: A point of sale terminal according to claim 23 (see claim 23 rejection), wherein the processing means is configured to be further responsive to a user id from the data input device to report said matches to a remote location via said network communication means. [0034]; [0035]; [0079]; [0080]
6. Regarding claim 25, Restis discloses: A point of sale terminal according to claim 23 (see claim 23 rejection), wherein the scanner means is a bar code scanner. ([0057]; fig 2B; [0069]; fig 11; [0088])
7. Regarding claim 26, Restis discloses: A point of sale terminal according to claim 25, wherein the machine-to-machine data input device comprises said bar code scanner. (fig 1, elm A104; fig 2B; fig 11; [0044]; [0069]; [0088]; clm 7)
8. Regarding claim 27, Restis discloses: A point of sale terminal according to claim 26 (see claim 26 rejection), wherein the processing means is configured to identify a user id by comparing a code from the bar code scanner with a range of codes not reserved for product ids. (fig 6B, elm 370; [0093])
9. Regarding claim 28, Restis discloses: A point of sale terminal according to claim 23 (see claim 23 rejection), including user input means, wherein the

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processing means is configured to identify a user id by detecting a predetermined operation of said user input means. ("... swipes ..." in [0069])

10. Regarding claim 29, Restis discloses: A transaction system comprising a point of sale terminal and a communication user agent, the point of sale terminal comprising:

- a) a bar code scanner means for reading product ids from products and a user id from a communication user agent, ([0044]; [0059]; fig 4; [0070]-[0073]; [0057]; fig 2B; [0069]; fig 11; [0088])
- b) network communication means, and [0019]; [0023]; [0075]
- c) processing means operable to accumulate a total purchase price in dependence on product id codes read by the scanner means and store said code values; ([0085]; [0088]; fig 3, elm 501; [0090]; fig 4, elm 509; [0092])

and the communication user agent being operable to display a bar code representing a user id code,

wherein the processing means of the point of sale terminal is configured to be responsive to a user id from said data input device to:

- i) transmit said user id to a remote location in a request message via the network communication means, [0071]; [0087]; [0090]; [0103]
- ii) receive a response to said request message via the network communication means, the response containing a list of product id codes, (abstract; [0076])

- iii) reduce the accumulated purchase price in dependence on matches between elements in said list and said stored product codes, and (abstract; [0033]; [0034]; [0084])
- iv) report said matches to a remote location via said network communication means. [0034]; [0035]; [0079]; [0080]

11. Regarding claim 30, Restis discloses: A system according to claim 29 (see claim 29 rejection), wherein the processing means is configured to identify a user id by comparing a code from the bar code scanner with a range of codes not reserved for product ids. (fig 6B, elm 370; [0093])

12. Regarding claim 31, Restis discloses: A system according to claim 30 (see claim 30 rejection), wherein point of sale means includes user input means and the processing means is configured to identify a user id by detecting a predetermined operation of said user input means. ("... swipes ..." in [0069])

CONCLUSIONS

13. The prior art of record and not relied upon in this Office action, but considered to be relevant for Applicant's disclosure:

- US 20020042774 A1; Credit manager method and system; Ortiz, Luis M. et al.

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- US 20020055906 A1; Methods and apparatus for intelligent selection of goods and services in telephonic and electronic commerce; Katz, Ronald A. et al.
- US 7343319 B1; Multi-tier pricing of individual products based on volume discounts; Walker, Jay S. et al.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RADU ANDREI whose telephone number is (571)270-5283. The examiner can normally be reached on Mo-Thurs 8am-5pm.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin Hewitt can be reached on 571.272.6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RADU ANDREI/
Examiner, Art Unit 4137

/Calvin L Hewitt II/
Supervisory Patent Examiner, Art Unit 4137